

1 Jeffrey L. Fazio (146043) (jlf@fazmiclaw.com)  
2 Dina E. Micheletti (184141) (dem@fazmiclaw.com)  
3 **FAZIO | MICHELETTI LLP**  
4 2410 Camino Ramon, Suite 315  
5 San Ramon, CA 94583  
6 T: 925-543-2555  
7 F: 925-369-0344

5 Attorneys for Plaintiff  
Keaton Harvey, on behalf of himself  
6 and all others similarly situated

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

10 KEATON HARVEY, on behalf of himself  
11 and all others similarly situated.

No. CV-10-01610

Plaintiff,

**COMPLAINT FOR DAMAGES  
AND FOR EQUITABLE RELIEF**

**CLASS ACTION**

vs.

## **JURY TRIAL DEMANDED**

## Defendants.

1 Plaintiff, Keaton Harvey, on behalf of himself and all others similarly  
 2 situated, allege as follows:

3 **PARTIES**

4 1. Plaintiff, Keaton Harvey, is a resident of New York, New York, who  
 5 owned an iPhone 6 before replacing it with a newer-model iPhone that he purchased  
 6 from Defendant Apple Inc.

7 2. Defendant Apple Inc. (“Apple”), is a corporation that was created under  
 8 the laws of the State of California, and has its principal place of business in  
 9 Cupertino, California.

10 3. Plaintiff is unaware of the true names and capacities of Does 1 through  
 11 100 and sues them by fictitious names. Plaintiff will amend this Complaint to  
 12 include these Doe defendants’ true names and capacities when they are ascertained.  
 13 Each Doe defendant is responsible in some manner, including without limitation, as  
 14 aiders and abettors, for the conduct alleged in this Complaint.

15 4. At all times mentioned in this Complaint, each and every defendant  
 16 was an agent, representative, or employee of each and every other defendant and in  
 17 doing the things alleged in this Complaint, each and every defendant was acting  
 18 within the course and scope of such agency, representation or employment and was  
 19 acting with the consent, permission and authorization of each of the remaining  
 20 defendants. Each defendant’s actions alleged in this Complaint were ratified and  
 21 approved by the other defendants and their respective officers, directors, or  
 22 managing agents.

23 **JURISDICTION AND VENUE**

24 5. This Court has diversity jurisdiction over the claims asserted herein on  
 25 behalf of a nationwide class pursuant to 28 U.S.C. section 1332, as amended in  
 26 February 2005 by the Class Action Fairness Act. Jurisdiction is proper because

27 a. the amount in controversy in this class action exceeds five million  
 28 dollars, exclusive of interest and costs, the proposed class includes

1 more than 100 members, more than one of whom reside in a state  
 2 other than California; and

3 b. Apple has purposefully availed itself of the privilege of conducting  
 4 business activities within the State of California, where Apple is  
 5 incorporated; has its principal place of business; where its officers  
 6 direct, control, and coordinate Apple's corporate activities; where Apple  
 7 engaged in the unlawful conduct alleged in this Complaint by, *inter*  
 8 *alia*, designing and selling the iPhone 5C, iPhone 6, the iPhone 6 Plus,  
 9 the iPhone 6S, the iPhone 6S Plus, the iPhone 7, and the iPhone 7 Plus  
 10 (and possibly other) Apple smartphones (collectively, the "Affected  
 11 iPhones") with software that causes Affected iPhones to operate more  
 12 slowly, and by implementing and executing the illegal, unfair,  
 13 fraudulent, and unconscionable corporate policies and practices alleged  
 14 herein; and by maintaining systematic and continuous business  
 15 contacts with the State, primarily through its Cupertino headquarters.

16 6. Venue is proper in this judicial district pursuant to 28 U.S.C. section  
 17 1391, and California Civil Code section 1780(d), because the conduct alleged in this  
 18 Complaint occurred in this judicial district.

19 **GENERAL ALLEGATIONS**

20 7. The iPhone is an internet and multimedia-enabled "smartphone"  
 21 designed and marketed by Apple. Apple introduced the original iPhone for sale in  
 22 the United States in or about June 2007. Since then, Apple has introduced a  
 23 succession of new models of the iPhone, including the Affected iPhones.

24 8. Each year, Apple, like its competitors, must find ways to encourage  
 25 prospective customers to purchase the latest model of its product. Plaintiff is  
 26 informed and believes that persuading consumers to replace their existing devices  
 27 with new ones becomes more difficult as consumers become familiar with iPhone  
 28 technology and more difficult to impress with new features. Plaintiff is also

1 informed and believes that consumers, including himself, will purchase a new  
 2 smartphone if they perceive problems with the performance of their current device.

3       9.     Although he had cared for his Affected iPhone (an iPhone 6)  
 4 meticulously from the moment he purchased it, it was not without problems.  
 5 Plaintiff's Affected iPhone would shut down suddenly, even when its battery levels  
 6 were well over 50 percent. And, in addition to other performance problems, Plaintiff  
 7 began to observe that his Affected iPhone had begun to operate in an extremely  
 8 sluggish manner, making it difficult to perform basic functions on the device.  
 9 Ultimately, the problems Plaintiff continued to experience with his Affected iPhone  
 10 got to the point where he was compelled to replace it. Based on Apple's reputation  
 11 and the belief that the iPhone was superior to smartphones offered by competitors,  
 12 Plaintiff replaced his Affected iPhone with a new iPhone at a cost of more than  
 13 \$1,000.

14       10. Plaintiff is informed and believes that Apple was aware of a defect in  
 15 his Affected iPhone at the time he purchased a new one, and not only failed to  
 16 disclose what it knew, but made deliberately misleading statements that were  
 17 intended to conceal the nature and scope of that defect.

18       11. In or about November 2016, Apple announced that a "very small  
 19 number" of Affected iPhones (specifically, the iPhone 6S and iPhone 6S Plus) were  
 20 affected by a problem that caused those devices to shut down, suddenly and  
 21 unexpectedly, "for no apparent reason." Plaintiff is informed and believes that, in  
 22 actuality, Apple knew that the lithium-ion batteries that it installed in Affected  
 23 iPhones were causing the devices to shut down unexpected, notwithstanding that  
 24 their battery levels were at as much as 60 percent when the shut-down occurred.

25       12. Despite claiming that the shutdowns were occurring for "no apparent  
 26 reason," Apple also announced that it had initiated a battery-replacement program  
 27 that was limited to the iPhone 6S and the iPhone 6S Plus, and that neither the  
 28

1 shutdown problem nor the battery-replacement program would serve to extend the  
 2 applicable warranty.

3       13. Plaintiff is informed and believes that Apple's announcement was  
 4 misleading and that Apple knew it was misleading at the time it made the  
 5 announcement in November 2016. Apple admitted publicly that a "small number of  
 6 customers outside the affected range [(i.e., Affected iPhones other than the 6S and  
 7 the 6S Plus)] have also reported a shutdown." *See Jeff John Roberts, "Why It's Time*  
 8 *for Apple to Come Clean About the iPhone Battery," Fortune* (Dec. 27, 2016)  
 9 (available online at <http://fortune.com/2016/12/27/apple-iphone-6-battery-problem/>).  
 10 Apple went on to claim, however, that "[s]ome of these shutdowns can occur under  
 11 normal conditions for the iPhone to protect its electronics." *Id.*

12       14. Plaintiff is informed and believes that these statements were  
 13 deliberately misleading as well. In actuality, the lithium-ion batteries in all Affected  
 14 iPhones cause them to operate erratically and to shut down the device unexpectedly  
 15 due to the batteries' inability to handle the demand created by processor speeds (the  
 16 "battery defect").

17       15. Rather than curing the battery defect by providing a free battery  
 18 replacement for all Affected iPhones, Apple sought to mask the battery defect by  
 19 modifying the iPhone operating system ("iOS") so that it reduces Affected iPhones'  
 20 processing speeds in an effort to prevent their batteries from causing erratic  
 21 operation and unexpected shutdowns.

22       16. But modifying iOS not only allowed Apple to conceal the true nature  
 23 and scope of the battery defect and to avoid expending time, money, and effort on  
 24 correcting it, Apple's decision to modify iOS instead had an added benefit to Apple:  
 25 the modified iOS would slow the performance of Affected iPhones, which would  
 26 serve to compel consumers to replace them with new iPhones—just as Plaintiff did.

27       17. This is not mere speculation. Recently, a company that performed  
 28 laboratory testing of Affected iPhones discovered that After denying the existence of

1 a battery problem for over a year, Apple recently admitted that it modified iOS in a  
 2 manner that slowed the performance of Affected iPhones, but characterized this  
 3 effort as a “feature”:

4 Our goal is to deliver the best experience for customers, which  
 5 includes overall performance and prolonging the life of their  
 6 devices. Lithium-ion batteries become less capable of supplying peak  
 7 current demands when in cold conditions, have a low battery charge or  
 8 as they age over time, which can result in the device unexpectedly  
 9 shutting down to protect its electronic components.

10 Last year we released a feature for iPhone 6, iPhone 6s and  
 11 iPhone SE to smooth out the instantaneous peaks only when  
 12 needed to prevent the device from unexpectedly shutting down during  
 13 these conditions. We’ve now extended that feature to iPhone 7 with  
 14 iOS 11.2, and plan to add support for other products in the future.

15 Shara Tibiken, “Apple admits slowing older iPhones, says it’s to prevent battery  
 16 issues,” *C/Net* (Dec. 20, 2017) (available online at <https://www.cnet.com/news/apple-slows-down-older-iphone-battery-issues/#ftag=CAD-09-10aa5b>).

17 18. Notwithstanding the purported benefits of this “feature,” Apple focused  
 18 exclusively on the number of shutdowns it purportedly prevented, but said nothing  
 19 about the fact that it also slowed the performance of Affected iPhones until after the  
 20 iOS modification was discovered during independent laboratory testing. “The  
 21 statement from Apple came in response to a report from earlier this week from  
 22 Primate Labs, the company behind the Geekbench processor benchmark software.  
 23 John Pool, the founder of the organization, said . . . that processors in iPhones slow  
 24 down and decrease in performance as batteries age and lose capacity. Poole  
 25 explained that users expect their phones to perform the same regardless of how old  
 26 the battery is, but his tests indicated that wasn’t the case.” *Id.*

27 19. Plaintiff has brought this action on behalf of himself and all others  
 28 similarly situated to require Apple **(a)** to modify iOS in a manner that prevents it  
 29 from slowing the performance of Affected iPhones; **(b)** to provide owners of Affected  
 30 iPhones with notice that the slow performance of those devices is caused by  
 31 modifications Apple made to iOS; **(c)** reimburse current owners of Affected iPhones

1 with the purchase price they paid for those devices after Apple knew, but failed to  
 2 disclose, the existence of the battery defect and the slow performance caused by the  
 3 iOS modification; **(d)** to compensate current and former owners of Affected iPhones  
 4 for the costs they incurred in attempting to repair or replace their Affected iPhones  
 5 due to the battery defect and/or the slow performance caused by the iOS  
 6 modification; **(d)** to provide current owners of Affected iPhones with new batteries  
 7 for those devices free of charge; and **(e)** to compensate former owners of Affected  
 8 iPhones for the cost of replacing those devices prematurely or, alternatively, to  
 9 provide former owners with the opportunity to return their replacement iPhones in  
 10 exchange for a refund together with the model of Affected iPhone (with a new  
 11 battery) that they owned prior to replacing that device.

12 **CLASS ALLEGATIONS**

13 20. Plaintiff brings this class action pursuant to Federal Rule of Civil  
 14 Procedure 23 and, to the extent applicable, the provisions of and California Civil  
 15 Code section 1781, on behalf of himself and all other persons similarly situated.

16 21. The class that Plaintiff seeks to represent is defined as follows: All  
 17 persons who reside in the United States who **(a)** own an Affected iPhone or **(b)**  
 18 owned an Affected iPhone and replaced it with a new device.

19 22. Plaintiff also seeks to represent a subclass that includes each member  
 20 of the proposed class described in Paragraph 21, above, who is a “consumer,” as that  
 21 term is defined by California Civil Code section 1761(d), or purchased “goods” or  
 22 “consumer goods,” as those terms are defined by California Civil Code sections 1761(a)  
 23 and 1791(a), respectively (the “Consumer Subclass”).

24 23. Excluded from the class are the following:

25 a. Apple, its subsidiaries, affiliates, officers, directors, and  
 26 employees;

b. persons who have settled with and validly released Apple from separate, non-class legal actions against Apple based on the conduct alleged herein;

c. counsel, and the immediate families of counsel, who represent Plaintiff in this action;

d. the judge presiding over this action;

e. jurors who are impaneled to render a verdict on the claims alleged in this action; and

f. persons who purchased an Extended Warranty in Colorado or in Florida and made a claim pursuant to the Extended Warranty.

11       24. Plaintiff are informed and believe that the proposed class comprises  
12 millions of members. The class is, therefore, so numerous and geographically  
13 dispersed that joinder of all members in one action is impracticable.

14        25. Apple has acted with respect to Plaintiff and members of the proposed  
15 class in a manner generally applicable to each of them. There is a well-defined  
16 community of interest in the questions of law and fact involved, which affect all  
17 class members. The questions of law and fact common to the class predominate  
18 over the questions that may affect individual class members, including the  
19 following:

a. whether Apple modified iOS in a manner that slowed the performance of Affected iPhones;

b. whether the representations Apple has made about the nature and scope of the battery defect are false;

c. whether Apple made false representations about the nature and scope of the battery defect for the purpose of concealing it and avoiding the expense of recalling and replacing the batteries in Affected iPhones;

d. whether Apple used the iOS modification to profit from Plaintiff and members of the proposed class by inducing them to buy a new replacement for their Affected iPhones;

e. whether Apple is subject to liability for fraudulently concealing material facts from Plaintiff and members of the proposed class;

f. whether Apple is subject to liability for violating the Consumers  
Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750-1784;

g. whether Apple's conduct has violated the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17209;

h. whether Apple has been unjustly enriched as a result of its fraudulent conduct, such that it would be inequitable for Apple to retain the benefits conferred upon it by Plaintiff and the proposed class;

i. whether Plaintiff claims satisfy the criteria for class certification under Federal Rule of Civil Procedure 23 and, to the extent applicable, California Civil Code section 1781;

j. whether compensatory or consequential damages should be awarded to Plaintiff and members of the proposed class;

k. whether punitive damages should be awarded to Plaintiff and members of the proposed class;

1. whether restitution should be awarded to Plaintiff and members of the proposed class;

m. whether other, additional relief is appropriate, and what that relief should be.

26. Plaintiff claims are typical of the claims of all members of the class they propose to represent in this action.

27. Plaintiff will fairly and adequately represent and protect the interests of the class, and do not have interests that are antagonistic to or in conflict with those they seek to represent.

1       28. Plaintiff have retained counsel who have extensive experience in the  
2 prosecution of class actions and other forms of complex litigation.

3       29. In view of the complexity of the issues and the expense that an  
4 individual plaintiff would incur if he or she attempted to obtain relief from a large,  
5 transnational corporation such as Apple, the separate claims of individual class  
6 members are monetarily insufficient to support separate actions. Because of the size  
7 of the individual class members' claims, few, if any, class members could afford to  
8 seek legal redress for the wrongs complained of in this Complaint.

9       30. The class is readily definable, and prosecution as a class action will  
10 eliminate the possibility of repetitious litigation and will provide redress for claims  
11 too small to support the expense of individual, complex litigation. Absent a class  
12 action, class members will continue to suffer losses, Apple's violations of law will be  
13 allowed to proceed without a full, fair, judicially supervised remedy, and Apple will  
14 retain sums received as a result of its wrongdoing. A class action will provide a fair  
15 and efficient method for adjudicating this controversy.

16       31. The prosecution of separate claims by individual class members would  
17 create a risk of inconsistent or varying adjudications with respect to thousands of  
18 individual class members, which would, as a practical matter, dispose of the  
19 interests of the class members not parties to those separate actions or would  
20 substantially impair or impede their ability to protect their interests and enforce  
21 their rights.

22       32. The proposed class satisfies the certification criteria of Federal Rule of  
23 Civil Procedure 23.

24

25

26

27

28

## CLAIMS FOR RELIEF

**FIRST CLAIM FOR RELIEF  
(Fraudulent Concealment)**

33. Plaintiff realleges and incorporates by reference the allegations contained in preceding paragraphs of this Complaint.

6       34. At all times relevant herein, Apple made misrepresentations of  
7 material fact to Plaintiff and the proposed class regarding the true nature and scope  
8 of the battery defect, claiming that an “unknown” problem was causing certain  
9 Affected iPhones to shutdown unexpectedly. Apple also falsely represented the  
10 reason that it modified iOS (to prolong battery life) in Affected iPhones, knowing  
11 that the modification also substantially slowed the performance of Affected iPhones,  
12 which would cause consumers to replace those devices with new iPhones. Apple  
13 knew those representations were false when it made them, and did so for the  
14 purpose of diminishing the possibility that the facts described in Paragraphs 10  
15 through 18 and 35 of this Complaint (which are incorporated herein by reference)  
16 would be discovered by Plaintiff and members of the proposed class.

17       35. Apple has concealed material facts from Plaintiff and the proposed  
18 class, including the following:

19                   a.     the existence, nature, and scope of the battery defect;

20                   b.     that modifying iOS for the ostensible purpose of prolonging

21                   battery life also caused Affected iPhones to perform substantially slower as

22                   their batteries aged, notwithstanding the iOS modification;

23                   c.     that the battery defect could only be remedied by replacing the

24                   lithium batteries in Affected iPhones;

25                   d.     that Apple concealed the foregoing facts from Plaintiff and

26                   members of the proposed class as a means of avoiding the expense involved

27                   with rectifying the battery defect.

1       36. Apple had a duty to disclose these facts, regardless of the existence of  
 2 privity (see, e.g., Cal. Civ. Code § 1711), by virtue of **(a)** Apple's exclusive knowledge  
 3 about the nature and scope of the battery defect, and that its modifications of iOS  
 4 caused Affected iPhones to perform poorly; **(b)** Apple's awareness that Plaintiff and  
 5 members of the proposed class were not reasonably likely to discover these facts; **(c)**  
 6 Apple's active concealment of those facts from Plaintiff and members of the class (by,  
 7 *inter alia*, making the false representations described in Paragraphs 10 through 18  
 8 and 34, above); and **(c)** Apple's statutory and common-law obligations to disclose  
 9 material information to the consumers who own or formerly owned Affected  
 10 iPhones, as alleged herein. Plaintiff would have acted differently if Apple had  
 11 disclosed this information to him and allowed him to make a fully-informed decision  
 12 before he purchased a replacement for his Affected iPhone.

13       37. The facts Apple has concealed from consumers are material and  
 14 uniform to Plaintiff and to the members of the class he proposes to represent in this  
 15 action.

16       38. Apple made misrepresentations of material fact and concealed the  
 17 material facts alleged herein intentionally and/or recklessly, with the intention that  
 18 Plaintiff and members of the proposed class would rely on its misrepresentations.  
 19 Plaintiff and members of the proposed class would have acted differently had the  
 20 omitted facts been disclosed to them.

21       39. As a proximate result of Apple's misrepresentations and concealment  
 22 and suppression of material facts, Plaintiff and the proposed class have sustained  
 23 damage by, *inter alia*, bearing the cost of purchasing new Affected iPhones; bearing  
 24 the cost of repairs due to the battery defect and/or problems resulting from the slow  
 25 performance caused by the iOS modification; and bearing the cost of purchasing  
 26 replacement devices as a result of the battery defect and/or the slow performance  
 27 caused by the iOS modification.

28

1       40. Because Apple engaged in the conduct alleged herein deliberately and  
2 with willful and malicious intent, Plaintiff and the proposed class are entitled to an  
3 award of punitive damages. The total amount of damages suffered by Plaintiff and  
4 members of the proposed class will be proved at trial.

**SECOND CLAIM FOR RELIEF**  
**(Unfair and Deceptive Acts and Practices**  
**in Violation of the Consumers Legal Remedies Act)**

7       41. Plaintiff realleges and incorporates by reference the allegations set forth  
8 in each of the preceding paragraphs of this Complaint.

9       42. This claim for relief is brought pursuant to the CLRA. Plaintiff and  
10 members of the Consumer Subclass are “consumers,” as that term is defined by Civil  
11 Code section 1761(d) because they bought Affected iPhones for personal, family, or  
12 household purposes.

13       43. Plaintiff and members of the Consumer Subclass have engaged in a  
14 “transaction” with Apple, as that term is defined by Civil Code section 1761(e).

15        44. The conduct alleged in this Complaint constitutes unfair methods of  
16 competition and unfair and deceptive acts and practices for the purposes of the CLRA,  
17 and were undertaken by Apple in transactions intended to result in, and which  
18 resulted in, the sale of goods to consumers; namely, to sell replacement batteries,  
19 repair services, and/or replacement devices for their Affected iPhones.

45. By engaging in the conduct alleged in Paragraphs 10 through 18 of this  
Complaint, Apple has violated subdivisions (a)(5), (a)(7), and (a)(9) of California Civil  
Code section 1770 by, *inter alia*, misrepresenting and concealing the true nature and  
scope of the battery defect and that the modification of iOS would cause Affected  
iPhones to perform slowly and erratically and not disclosing those facts to Plaintiff  
and members of the proposed class before they bore the cost of purchasing a  
replacement device for their Affected iPhone, purchasing a new Affected iPhone,  
and/or purchasing replacement parts and/or repair services as a result of the battery  
defect or the iOS modification.

1       46. By concealing the battery defect and the iOS modification from Plaintiff  
2 and members of the proposed class, Apple has represented, and continues to  
3 represent, that Affected iPhones have characteristics, uses and benefits, or qualities  
4 that they do not have, and that they are of a particular standard, quality, or grade,  
5 when they are not, in violation of Civil Code section 1770, subsections (a)(5) and  
6 (a)(7).

7       47. By engaging in the conduct alleged herein, above, Apple has also  
8 advertised, and continues to advertise, goods with the intent not to sell them as  
9 advertised, in violation of California Civil Code section 1770(a)(9).

10       48. Pursuant to Section 1782 of the CLRA, Plaintiff has sent written notice  
11 to Apple by certified mail regarding its violations of the CLRA, thereby providing  
12 Apple with an opportunity to correct or otherwise rectify the problems alleged herein  
13 within 30 days of receipt of that notice.

14        49. Unless Apple agrees to correct, repair, replace, or otherwise rectify the  
15 problems created by Apple's conduct as alleged herein, Plaintiff will amend this  
16 Complaint to seek an order awarding actual damages and, because Apple engaged in  
17 the conduct alleged herein deliberately and with willful and malicious intent, punitive  
18 damages.

19       50. Plaintiff now seeks an order requiring Apple to **(a)** cease violating the  
20 CLRA by modifying iOS in a manner that prevents it from slowing the performance  
21 of Affected iPhones; **(b)** to provide owners of Affected iPhones with notice that the  
22 slow performance of those devices is caused by modifications Apple made to iOS;  
23 and **(c)** to provide current owners of Affected iPhones with new batteries for those  
24 devices free of charge.

**THIRD CLAIM FOR RELIEF**  
**(Unlawful, Fraudulent, and Unfair Business Practices**  
**in Violation of the Unfair Competition Law)**

27       51. Plaintiff realleges and incorporates by reference the allegations set  
28 forth in each of the preceding paragraphs of this Complaint.

1           52. By committing the acts and practices alleged herein, Apple has  
 2 engaged in unlawful, fraudulent, and unfair business practices in violation of the  
 3 UCL:

4           a. **Unlawful Conduct:** As a result of engaging in the conduct  
 5 alleged in this Complaint, Apple has violated the UCL's proscription against  
 6 engaging in unlawful conduct by virtue of **(i)** its fraudulent and deceitful  
 7 conduct in violation of California Civil Code sections 1709 through 1711; and  
 8 **(ii)** its violations of the Consumers Legal Remedies Act, California Civil Code  
 9 sections 1770(a)(5), (a)(7), and (a)(9).

10           b. **Fraudulent Conduct:** Apple has violated the UCL's  
 11 proscription against fraud as a result of engaging in the fraudulent and  
 12 deceitful conduct alleged in paragraphs 10 through 18 of this Complaint.

13           c. **Unfair Conduct:** Apple has violated the UCL's proscription  
 14 against unfair conduct as a result of engaging in the conduct alleged in this  
 15 Complaint, which violates legislatively-declared policies articulated in, *inter*  
 16 *alia*, California Civil Code sections 1710, 1711, and 1770, subsections (a)(5),  
 17 (a)(7), and (a)(9).

18           53. Apple's violations of the UCL continue to this day. As a direct and  
 19 proximate result of Apple's violations of the UCL, Plaintiff has suffered actual  
 20 damage in that, *inter alia*, they paid more for their Affected iPhones than they  
 21 would have had Apple not concealed the existence of the battery defect and the  
 22 effects of its modification of iOS.

23           54. Pursuant to Section 17203 of the UCL, Plaintiff and the class seek an  
 24 order that requires Apple **(a)** to modify iOS in a manner that prevents it from  
 25 slowing the performance of Affected iPhones; **(b)** to provide owners of Affected  
 26 iPhones with notice that the slow performance of those devices is caused by  
 27 modifications Apple made to iOS; **(c)** reimburse current owners of Affected iPhones  
 28 with the purchase price they paid for those devices after Apple knew, but failed to

1 disclose, the existence of the battery defect and the slow performance caused by the  
 2 iOS modification; **(d)** to provide current owners of Affected iPhones with new  
 3 batteries for those devices free of charge; **(e)** to make full restitution of all moneys  
 4 wrongfully obtained from its violations of the UCL, as alleged in this Complaint;  
 5 and **(f)** requires Apple to pay the attorney fees and costs incurred by counsel for  
 6 Plaintiff and the proposed class in accordance with California Code of Civil  
 7 Procedure section 1021.5.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, on behalf of themselves and all others similarly  
 10 situated, pray for relief in this Complaint as follows:

11 1. For an order certifying that the action may be maintained as a class  
 12 action, on behalf of the proposed class, the Consumer Subclass, and any other  
 13 subclass(es) the Court may deem appropriate;

14 **AS TO THE FIRST CLAIM FOR RELIEF**

15 1. For an award of monetary damages, including but not limited to,  
 16 compensatory, incidental and consequential damages commensurate with proof at  
 17 trial for the acts complained of herein;

18 2. For an award of punitive damages in an amount consistent with  
 19 applicable statutes and precedent;

20 **AS TO THE SECOND CLAIM FOR RELIEF**

21 3. For an order pursuant to California Civil Code section 1780(a)(2)  
 22 requiring Apple to **(a)** provide owners of Affected iPhones with notice that the slow  
 23 performance of those devices is caused by modifications Apple made to iOS; **(b)**  
 24 modify iOS in a manner that prevents it from slowing the performance of Affected  
 25 iPhones; and **(c)** provide current owners of Affected iPhones with new batteries for  
 26 those devices free of charge;

27 4. For an order awarding attorney fees and costs pursuant to California  
 28 Civil Code section 1780(e);

**AS TO THE THIRD CLAIM FOR RELIEF**

5. For an order that requires Apple **(a)** to modify iOS in a manner that  
 3 prevents it from slowing the performance of Affected iPhones; **(b)** to provide owners  
 4 of Affected iPhones with notice that the slow performance of those devices is caused  
 5 by modifications Apple made to iOS; **(c)** reimburse current owners of Affected  
 6 iPhones with the purchase price they paid for those devices after Apple knew, but  
 7 failed to disclose, the existence of the battery defect and the slow performance  
 8 caused by the iOS modification; **(d)** to provide current owners of Affected iPhones  
 9 with new batteries for those devices free of charge; **(e)** to make full restitution of all  
 10 moneys wrongfully obtained from its violations of the UCL, as alleged in this  
 11 Complaint; and **(f)** requires Apple to pay the attorney fees and costs incurred by  
 12 counsel for Plaintiff and the proposed class in accordance with California Code of  
 13 Civil Procedure section 1021.5.

**AS TO ALL CLAIMS FOR RELIEF**

15 6. For an award of attorney fees;  
 16 7. For an award of costs;  
 17 8. For an award of pre- and post-judgment interest on any amounts  
 18 awarded; and  
 19 9. For any and all other relief the Court deems just and appropriate.

**DEMAND FOR JURY TRIAL**

21 Plaintiff and the proposed class demand a jury trial in this action for all the  
 22 causes of action so triable.

23 DATED: December 21, 2017      **FAZIO | MICHELETTI LLP**  
 24

25  
 26 by    /s/ Jeffrey L. Fazio  
 27

28  
 29 *Attorneys for Plaintiff Keaton Harvey  
 and the Proposed Class*